# UNITED STATES GOVERNMENT BEFORE THE NATIONAL LÁBOR RELATIONS BOARD REGION 13

CHICAGO MATHEMATICS & SCIENCE ACADEMY CHARTER SCHOOL, INCORPORATED,

**Employer** 

and

Case 13-RM-1768

CHICAGO ALLIANCE OF CHARTER TEACHERS & STAFF, IFT, AFT, AFL-CIO,

Union.

## **DECISION AND ORDER**

Upon petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on August 12, 2010 before a hearing office of the National Labor Relations Board to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.

## I. Issues and Parties' Positions

The Employer, Chicago Mathematics & Science Academy Charter School, Incorporated (herein CMSA or Employer), filed a petition seeking an election conducted by the Board among a unit of its employees. CMSA filed the instant petition after the Chicago Alliance of Charter Teachers and Staff, IFT, AFT, AFL-CIO (herein Union) filed a majority interest representation petition with the Illinois Educational Labor Relations Board (IELB) seeking to represent a unit of Employer's teachers. The Union contends that the Board does not have jurisdiction over CMSA to process the instant petition. The Union's contention is based on its assertion that CMSA is a political subdivision of the State of Illinois and therefore exempt from the jurisdiction of the Board under Section 2(2) of the Act. CMSA asserts that it is not a political subdivision of the State of Illinois.

<sup>&</sup>lt;sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

b. The labor organization involved claims to represent certain employees of the Employer.

Based on the parties positions regarding whether the Board can assert jurisdiction over CMSA and the record in this matter, the issue is whether CMSA is a political subdivision of the State of Illinois and therefore exempt from NLRB jurisdiction.

## II. <u>Decision</u>

Based on the entire record of this proceeding and for the reasons set forth below, I find that CMSA is a political subdivision exempt from the coverage of the Act within the meaning of Section 2(2). Accordingly, I am dismissing the instant petition.

# III. Statement of Facts

#### A. Background

Chicago Mathematics and Science Academy Charter School, Inc. is a privately run 503(c)(3) not-for-profit corporation. CMSA was created in October 2003 by a group of private individuals. CMSA's initial registered agent was Taner Ertekin and pursuant to CMSA's Articles of Incorporation, CMSA's first board of directors included private individuals Ertekin, Robin LaSota, Dr. Faruk Guder, Leticia Herrera, and Sunny Penedo-Chico.

Following incorporation of CMSA in October 2003, CMSA was granted a charter to operate a public school in Chicago and entered into a charter agreement with Chicago Public Schools (herein CPS) for a five-year term, from July 2, 2004 through June 30, 2009. CMSA and CPS renewed their contractual agreement, effective from July 1, 2009 through June 30, 2014. The current registered agent for CMSA is Ali Yilmaz.

A charter school is a privately-run public school of choice, although it is not subjected to the same rules and regulations as a typical public run school in a public school system, such as CPS. Charter school laws very from state to state, but most, if not all, states have an authorizer. Charter schools in Chicago are authorized by the Office of New Schools within CPS.

Charter contracts in Illinois are five-year contracts and at the end of that period, schools, like CMSA, go through an extensive renewal process during which the authorizer reviews the original charter, financial information, governance information, and student performance data. A charter may be revoked, put on probation, or not renewed if a school failed to meet its contractual charter obligations.

As provided in the CMSA Articles of Incorporation and the Charter Schools Law, CMSA has a Board of Directors that govern the organization and set the mission of the organization. CMSA's current Board of Directors is Yavuz Burak Canbolat, Board President Jeff Kulenovic, Secretary Edip Pektas, Treasurer, and Members Sulejman Dizdarevic, Ali Yurtsever, Murat Surucu, and Hanefi Tiryaki. None of these individuals are government officials, nor do they work for a government entity.

The Board of Directors is self-appointed in that Board members nominate someone to join and the Board then votes according to the bylaws to determine whether the person joins the Board. According to CMSA bylaws, the Board of Directors cannot have less than five members, but not more than nine. Board members may be removed with or without cause. No government entity in Illinois has ever appointed or has the power to appoint a Board member. Likewise, no member of the Board is subject to removal by CPS or by the Illinois State Board of Education.

CMSA's stated mission is to prepare students for college by creating an effective learning community of higher standards and expectations with a rigorous curriculum focusing on science, math, and technology.

CMSA's primary place of business is located at 7212 North Clark Street, Chicago, Illinois 60626. CMSA owns the property and building at this location. No government entity shares in the ownership of this property.

#### **B.** CMSA's Operations

#### **Faculty**

CMSA directly employs about 50 employees. These employees include teachers (approximately 35), administrative staff, custodians, and secretaries. In accordance with CMSA's contract with Concept Schools, a not-for-profit charter school management organization, CMSA's principal, Ali Yilmaz, and business manager, Hilal Kaya, are employed by Concept Schools. Concept Schools provides management services to CMSA. Concept Schools, like CMSA, was created by private individuals. Concept Schools is managed by a board of directors, a chief executive officer, and a vice president. None of these individuals, including its employees, the CMSA principal and the business manager, work for a government entity, or are appointed or subject to removal by a government entity.

CMSA's principal is responsible for all the day-to-day operations of the school including, but not limited to, the hiring decisions, supervision and evaluation of teachers, conflict resolution, professional staff development plans, supervising the budget, and supervising the business manager.

The business manager for CMSA is responsible for purchasing decisions, retention and payment of vendors, financial monitoring and reporting, the supervision of employee payroll and benefits, and the evaluation and supervision of paraprofessional and maintenance staff.

Excluding CMSA's principal and business manager, the rest of CMSA's staff is directly employed by CMSA. CMSA's principal is responsible for CMSA's personnel policies including the appointment, assignment, supervision, and separation of its employees. CMSA's principal, through Concept Schools, administers efforts to develop the wage and benefit package, which is then submitted and considered for approval to

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CMSA's Board of Directors. The Board of Directors authorize a wage and benefit package for employees and give the principal the discretion to negotiate a wage rate for newly hired employees within certain pre-determined parameters. The health insurance plan offered to its employees is selected by the CMSA Board of Directors and the Board determines the amount the employees must pay to elect the health insurance offered by CMSA. Similarly, the Board of Directors determine the number of paid leave days offered to CMSA employees. The rules and benefits that cover CMSA employees are outlined in CMSA's 2009-10 Personnel Handbook.

The Charter Schools Law provides that charter schools must employ instructional employees that are either certified under Article 21 of The Illinois School Code or possess alternate qualifications as specified in the Charter Schools Law. 105 ILCS 5/21-1, et seq.; 105 ILCS 5/27A-10(c).

CMSA teachers participate in the Chicago Teacher's Pension Fund, in accordance with the Illinois Pension Code and the charter agreement between CMSA and CPS. See 40 ILCS 5/17-105.1 et seq. CMSA is statutorily and contractually obligated to make a contribution, on behalf of each teacher to the Chicago Teacher's Pension Fund, in the amount equivalent to nine percent of the teacher's salary. In using its discretion, the CMSA Board of Directors elected to contribute seven percent of a teacher's salary, and the remaining two percent is covered by each employee.

According to the Charter Schools Law, a charter school must comply with the Local Governmental and Governmental Employees Tort Immunity Act. 5 ILCS 5/27A-5(g)(3). The purpose of the Act is to "protect local public entities and public employees" from liability arising "from the operation of government." 745 ILCS 10/1-101.1(a).

No government entity plays a role in the hiring, supervision, or termination of CMSA employees. Further, no government entity plays a role in determining the specific amount of wages that are paid to new or continuing CMSA employees, the type of health insurance plan that is offered, or the number of paid leave days enjoyed by CMSA employees. Nothing in the charter agreement between CMSA and CPS addresses the wage and benefit package that must be offered to CMSA employees.

## **CMSA's Charter**

The Illinois Charter Schools Law defines a charter school as a "public, nonsectarian, nonreligious, non-home based, and non-profit school." 105 ILCS 5/27A-5(a). The statute further states that a charter school must be organized and operate as a nonprofit corporation or other discrete, legal, nonprofit entity authorized under the laws of the State of Illinois. *Id.* 

The Charter Schools Law characterizes a certified charter as a "binding contract and agreement between the charter school and a local school board under the terms of which the local school board authorizes the governing body of the charter school to operate...on the terms specified in the contract." 105 ILCS 5/27A-6(a). Pursuant to the

Charter Schools Law, CPS serves as the sponsor and authorizer for CMSA to operate a charter school in Chicago.

CMSA's charter agreement with CPS sets forth many compliance and ongoing reporting requirements. These compliance and reporting obligations are summarized in a charter school compliance chart compiled by the CPS Office of New Schools. Among other things, CMSA is responsible for filing with CPS a list of its Board of Directors, minutes from the Board meetings; student disciplinary policies; a school year calendar; student attendance data; annual and quarterly budget information; specifications for a student admission lottery system; information regarding the expulsion of students; student transfer updates; annual financial and compliance audits; a detailed budget; quarterly statements showing revenues and actual expenses; a list of employees and results of criminal background checks; teacher qualification data; a student code of conduct or an election to use CPS's code of conduct; and timely notification of CMSA's election to use CPS special education staff or to hire its own staff.

CMSA is also required to be in compliance with and submit reports to the federal government and the State of Illinois. CMSA is responsible for complying with the McKinney-Vento Homeless Assistance Act and the Illinois Education for Homeless Children Act. CMSA is also responsible for complying with The Abused and Neglected Child Reporting Act; The Illinois School Safety Drill Act; The No Child Left Behind Act of 2001 pursuant to which CMSA must submit data to CPS or the Illinois State Board on students participating in Title 1 programs; and The Illinois School Student Records Act in which CMSA must submit data to CPS or the Illinois State Board with respect to parent participation, truancy, class size and time distribution. With respect to student suspension and expulsion, the Charter Schools Law states that a student suspended or expelled from a charter school is deemed to be suspended or expelled from the public schools of the district in which the student resides. *Id.* at 5/27A-4(h).

The Charter Schools Law provides that a charter school, "shall be administered and governed by its board of directors or governing body in the manner provided in its charter." 105 ILCS 5/27A-5(c). The Charter Schools Law further states that, "The governing body of a charter school shall be subject to the Freedom of Information Act and the Open Meetings Act." *Id.* Both, the Freedom and Information Act and the Open Meetings Act are applicable to "public bodies" and require, respectively, that public bodies make their records available to any requesting person for inspection and copying and that meetings of public bodies be open to the public. 5 ILCS 140/3,4; 5 ILCS 120/1.02,2.

CMSA operates on a \$5.6 million budget. The Charter Schools Law provides that a charter school is prohibited from charging tuition to any of its students and if there are more applicants than available slots, admission will be selected by lottery. 105 ILCS 5/27A-4(h). Consequently, CMSA receives about 80% of their funding, approximately \$4.5 million, from CPS and this amount is based on the number of students CMSA has. In configuring the amount of money distributed to CMSA from CPS, CPS allocates \$7,214 per pupil, per year, paid in four installments. CMSA also receives Title I and

Title II federal grant funding. CMSA receives about \$115,000.00 under Title I for having at-risk students and the amount received by CMSA is determined based on students who qualify for free and reduced lunch. CMSA receives about \$26,000 under Title II for professional development. CMSA receives about \$340,000.00 in state general aid and \$30,000 in aid for students whose primary language is not English. Finally, CMSA also raises funds, between \$60,000.00 to \$100,000.00, through fundraising and grants.

These payments to CMSA are conditioned on submission by CMSA to CPS the aforementioned required reports pertaining to student names and daily student attendance, plus all submissions and documentation set forth in the aforementioned compliance chart. Specifically, CMSA is required, by the Accountability Plan which is incorporated into its charter agreement with CPS, to enter daily student attendance into CPS's IMPACT computer student information system. CMSA is required to meet certain attendance percentages which are tracked by CPS based on CMSA's data entry into the CPS IMPACT system.

Currently, CPS provides one nurse, one speech therapist, and one social worker to CMSA to provide services to CMSA students. These clinicians provide services according to the Individualized Educational Plan of the student. Similarly, CPS will provide CMSA special education teachers or provide CMSA reimbursement of up to \$65,000 per teacher for their salary and benefits. CMSA currently employs its own special education teachers. Based on CPS's special education staffing formulas and each student's Individualized Educational Plan, CMSA is currently reimbursed for seven special education teachers. CMSA may elect to hire more special education teachers and CMSA may also elect to offer a higher salary or benefits which exceed the \$65,000 per teacher reimbursable allotment. However, CMSA will not be reimbursed for these additional expenses.

According to the Charter Schools Law, a charter school is responsible for the management and operation of its fiscal affairs, to include the preparation of its budget. 105 ILCS 5/27A-5. The charter school must also annually retain an outside, independent contractor to audit the school's finances. *Id.* Accordingly, CMSA's Finance and Audit Committee (herein FAC) is responsible for developing CMSA's annual budget. This committee is a subset of the CMSA Board of Trustees, and includes the CMSA President, Treasurer, and Secretary. FAC is responsible for direction and oversight regarding CMSA's overall financial management. CMSA's Board of Directors ultimately approves the CMSA annual budget developed by FAC. CMSA then submits their annual budget as well as quarterly reports in accordance with a CPS template which requires the inclusion of specific information, including revenues and expenditures by category such as student expenses, employee salaries, employee benefits, and other miscellaneous expenses.

No FAC member is a public official or appointed by a government entity. During the budget deliberation process, CPS provides no input into how CMSA should allocate its resources. On one occasion, CPS requested clarification with respect to certain budget numbers detailed in the CPS template budget report. CPS has never rejected CMSA's budget.

As previously mentioned, CMSA was granted a charter to operate a charter school in Chicago and on July 2, 2004, CMSA entered into a charter agreement with CPS for a five-year term. The charter agreement was renewed on July 1, 2009 for another five-year term. Like the initial charter school application, the renewal application is extensive and must include detailed information about CMSA's curriculum, student testing, teacher retention and evaluation, instructional strategies, and professional development. CPS's Office of New Schools reviews the original charter, financial information, governance information, and student performance data.

The Charter Schools Law and the charter agreement between CMSA and CPS states that a charter may be revoked, put on probation, or not renewed if a school cannot meet its contractual charter obligations. A charter may be revoked or not renewed if the chartering entity can clearly demonstrate that the charter school commits a material violation of any of the conditions, standards, or procedures set forth in the charter, including the Accountability Plan; fails to meet or make reasonable progress toward achievement of the content standards or pupil performance standards identified in the charter or in the Accountability Plan; fails to meet generally accepted standards of fiscal management; or materially violates any provision of law from which the charter school is not exempted. Further, CPS may withhold funds from CMSA in the event of a material violation of the charter agreement. CMSA must participate in state assessments required of public schools by the Illinois School Code. Finally, CMSA must grant reasonable access to CPS to allow CPS to conduct site visits for the purpose of evaluating the operations and performance of the charter school.

# C. Specific Provisions and Recent Amendments to the Illinois Charter Schools Law and the Illinois Educational Labor Relations Act

The Illinois General Assembly amended the Charter Schools Law, effective January 1, 2010, to direct charter schools to comply with all provisions of...the Illinois Educational Labor Relations Act (herein IELRA). 105 ILCS 5/27A-5(g). This amended provision states that, "The change made...is declaratory of existing law." *Id*.

Also effective January 1, 2010, the IELRA was amended to include within the definition of "educational employer" subject to the IERLA the, "governing body of a charter school" established under the Charter Schools Law of the Illinois School Code. 115 ILCS 5/2(a). This amended provision also states that, "The change made...to this paragraph (a) to make clear that the governing body of a charter school is an 'educational employer' is declaratory of existing law." *Id*.

In addition to these statutory amendments, legislative intent is further exemplified by the March 30, 2009 third reading debate in the Illinois House of Representatives. In the floor debate, Representative Jerry Mitchell spoke, "If you were around in '95, and there's still a few of us that were around then, we did pass a Charter School Bill back then. And the question was asked at that time if charter schools would fall under the Illinois Labor Relations Act and the answer to that was a definite yes by Representative

Cowlishaw." Representative Monique Davis further spoke on original legislative intent, "In the original legislation I think Representative Cowlishaw answered the questions of Representative Ryder in reference to the intent of charter schools being under the Illinois Education Relations Board."

### IV. Analysis

In Management Training Corp., 317 NLRB 1355, 1358 (1995), reconsideration denied 320 NLRB 131 (1995)(overruling Res-Care, Inc., 280 NLRB 670 (1986)), the Board announced that in deciding whether to assert jurisdiction, it would consider only whether the subject entity meets Section 2(2)'s definition of "employer" and satisfies the applicable monetary jurisdictional standard. Section 2(2) excludes "any state or political subdivision thereof" from the definition of "employer." To determine whether an entity is a political subdivision, the Board applies the test described in NLRB v. National Gas Utility District of Hawkins County, Tennessee. 402 U.S. 600, 604-05 (1971). The test set forth in Hawkins limits the political subdivision exemption to entities that are either (i) created by the state, so as to constitute departments or administrative arms of the government, or (ii) administered by individuals who are responsible to public officials or to the general electorate. Id. at 604-05.

An entity need only meet one prong of the *Hawkins* test to be exempt from the Act. In this case, however, I find that CMSA is clearly a political subdivision of the State of Illinois under both prongs of the *Hawkins* test, having found each one, by itself, equally compelling. Accordingly, for the reasons set forth below, I find that CMSA falls under the Act's narrow political subdivision exemption under the first, as well as and alternatively, the second prong of the *Hawkins* test.

### A. CMSA is a Statutorily Created Public Charter School

In *Hawkins*, the Supreme Court found that federal, not state, law is controlling in determining whether an entity is a political subdivision and thus not an "employer" subject to the Act. 402 U.S. at 603. However, the Supreme Court agreed with the Board that State law declarations and interpretations are to be given careful consideration. *Id.* The Board, therefore, considers the state's enabling legislation or intent in determining whether an employer is exempt from the Act's coverage. *Research Foundation of the City University of New York*, 337 NLRB 965, 968 (2002).

In Illinois, the enabling legislation for charter schools is the Charter Schools Law, enacted in 1995. 105 ILCS 5/27A-1 *et seq*. The Charter Schools Law prohibits any existing private, parochial, or non-public school from converting to a charter school.<sup>2</sup> This statute governs charter schools in that it establishes the state's intent, authorizes local school boards to certify a charter, and provides for public funding, governmental

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<sup>&</sup>lt;sup>2</sup> Article 10, §3 of the Illinois Constitution reads in relevant part: "Neither the General Assembly nor any...school district...shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, institution, controlled by any church or sectarian domination whatever...."

oversight and accountability requirements. The Illinois General Assembly's declared purpose for enacting the Charter Schools Law is "to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating children within the public school system. Id. at 5/27A-2(c) (emphasis added). The legislative declaration further states that the statute was enacted to authorize charter schools to "create opportunities within the public school system... for development of innovative and accountable teaching techniques." Id (emphasis added). The Employer-Petitioner argues in its post-hearing brief that the Charter Schools Law reference to "public" means "open access" instead of "government status." Contrary to the Employer-Petitioner's contentions, the Illinois General Assembly is clear in its legislative declaration that charter schools are "within the public school system" and in authorizing charter schools, there exists a "renewed commitment by the State of Illinois to the mission, goals, and diversity of public education." Id.

The recent declaratory amendments to both, the Illinois Charter Schools Law and the Illinois Educational Labor Relations Act (IERLA), providing that a charter school shall comply with the IERLA and that the governing body of a charter school established under Article 27A of the School Code (the Charter Schools Law) is an "educational employer" subject to the IELRA, respectively, further exemplifies legislative intent that charter schools are within the public school system. 105 ILCS 5/27A-5(g), 115 ILCS 5/2(a).

Regional Director decisions in Regions 31 and 32, finding charter schools operating under the California Charter School Law as exempt from the Board's jurisdiction are analogous to the case at hand. Like the instant case, these decisions involved entities that were directly chartered by a public body and had a direct relationship with that public body, including being subject to certain state laws and direct funding from said public body. For example, in Education for Change, 32-RM-801, the Regional Director of Region 32 found that the entity holding the charter was created directly by the state so as to constitute a department or administrative arm of government and was therefore a political subdivision under the first prong of the *Hawkins* test given that the state's charter schools law made clear an intent to make charter schools a part of the public school system, the charter school was primarily funded by and financially accountable to the state, and the school's charter was authorized by and could be revoked by the state. In so holding, the Regional Director rejected the employer's argument that it could not be a political subdivision because it is a Section 501(c)(3) corporation with its own board of directors finding that "once it decided to go into the business of operating a charter school, it became subject to all the statutory restrictions, regulations, and privileges" set forth in the state's charter schools law.

Similarly, in *Los Angeles Leadership Academy*, 31-RM-1281, the Region 31 Regional Director likewise found that the entity at issue was created directly by the state so as to constitute a department or administrative arm of government and was therefore a political subdivision under the first prong of the *Hawkins* test. In that case, the charter school was, like the instant case, incorporated with the intent to operate as a charter school pursuant to the state's charter schools law. Further, the only way to establish a

public charter school under California law is by a public sponsor approval of a charter school petition. The Illinois Charter Schools Law likewise requires charter school petitions to be approved by a sponsor, i.e. CPS, for a charter school to operate in the first instance. On facts similar to the instant case, the Regional Director in *Los Angeles Leadership Academy* also found that the charter school was not a private employer simply because the charter school made its own personnel decisions with regard to hiring and firing in light of the fact that teachers are, among other things, statutorily required to possess certain credentials and are eligible to participate in the state Teachers Retirement Fund. Citing *Hinds County Human Resources Agency*, 331 NLRB 1404, 1405 (2000), the Regional Director stated that employee participation in a state-sponsored or created pension system is a significant indicator of statutory exemption under Section 2(2) of the Act.

In prior Board cases, the Board has found that it lacked jurisdiction over employer's whose operations were set up under circumstances similar to CMSA. In Hinds County, 331 NLRB 1404 (2000), the Board found that an agency administering low-income assistance programs in Mississippi was exempt from the Act's coverage under the first prong of the Hawkins test. The Board relied principally upon the language of the enabling statute, which demonstrated the legislature's clear intent that government retained control over the agency. The Board further relied on the state's significant control over the employer's funding, budgeting, and auditing, as well as the agency's taxexempt status and participation in the state retirement system. Specifically, the Board relied on the fact that through the enabling statute, the local government not only required significant reporting requirements from the agency, but also had the, "power to call the Employer in for clarification." Id. As discussed above, CMSA receives significant funding from CPS and is subject to extensive reporting requirements to CPS. CPS has on occasion asked CMSA for clarification with respect to its budget. Like Hinds County CPS has the power to question and ask CMSA for clarification with respect to its numerous reporting requirements, including CMSA's budget, auditing reports, student disciplinary policy, and teacher certification.

Likewise, in *Jarvis Public Library Assn.* 262 NLRB 1386 (1982), there was significant state control over the employer's expenditures by requiring government approval of its annual budget prior to distribution of funds and the employees' participation in the state's retirement system and health insurance plan. As a result, the Board concluded that despite the employer's independent hiring/firing authority, the employer was an administrative arm of the State.

In *Hawkins* the Supreme Court stressed that the Board should examine the entity's actual operations and characteristics when assessing its Section 2(2) status. *Id.* at 604, adopting *NLRB v. Randolph Electric Membership Corp.*, 343 F.2d 60, 62-63 (4th Cir. 1965), as correct law. Here, in examining the actual operations and characteristics of CMSA, the record clearly shows that CMSA operates a charter school only through its charter agreement with CPS, as authorized under the Charter Schools Law that prescribes charter schools to be within the public school system. CMSA's operations and characteristics are wholly governed by the Charter Schools Law and its authorized charter

agreement with its sponsor, CPS. In its operations, CMSA cannot charge tuition and must admit all applicants who reside in the district. If more applicants request admission to CMSA than can be accommodated, the enabling statute provides specifications for a student admission lottery system. Moreover, where a student is suspended or expelled from a charter school, the student is also deemed to be suspended or expelled from the public schools of the district in which the student resides. These characteristics are similar to those of a traditional public school.

While CMSA is organized as a Section 501(c)(3) corporation with its own Board of Directors, when looking at CMSA's actual operations, CMSA and its Board of Directors are subject to statutory restrictions, regulations, and privileges that a private employer would not be subject to and negate a finding that CMSA is a private employer. Specifically, CMSA's charter was granted by the state and is renewed only on the condition that it continues to meet its statutory requirements. If CMSA does not comply with its charter obligations, CPS, as authorizer, may revoke, put on probation, or not renew CMSA's charter. The State in treating this public charter school similar to any other entity of the State, has dictated that CMSA's Board of Directors is subject to the Freedom of Information Act and the Open Meetings Act. Also, CMSA and its employees enjoy government immunity. The Charter Schools Law provides for significant public funding based on a per pupil allocation with extensive governmental oversight. CMSA's autonomy to hire and fire its staff is outweighed by the fact that these employees are required to possess certain credentials, may participate in the Chicago Teacher's Pension Fund, and are subject to government immunity. CPS provides additional resources to CMSA in its operations by reimbursing CMSA for seven special education teachers and as well as providing CMSA with three employees to serve as clinicians.

Upon the entire record in this proceeding and given the foregoing consideration, it is evident that CMSA's operations and characteristics fall under the ambit of an administrative arm of the State of Illinois. Accordingly, I find that CMSA was "created directly by the state so as to constitute a department or administrative arm of the government" and is therefore, a political subdivision of the State of Illinois under the first prong of the *Hawkins* test. 402 U.S. at 604-605.

# B. CMSA is Administered by Individuals Responsible to Public Officials

For an entity to be exempt from the Act's coverage under the second prong of Hawkins, it must be administered by individuals who are responsible to public officials or to the general electorate. 402 U.S. at 604. Under this prong, the Board examines factors bearing on an entity's relation to the State. The Board considers whether the individuals who administer the entity in question are appointed or subject to removal by public officials, whether the employer is publicly or privately funded, whether its expenditures are subject to any public financial reporting or auditing strictures, whether it carries out day-to-day management responsibilities free from or subject to oversight, and whether it is governed by public record or open meeting requirements. See, e.g., Regional Medical Center at Memphis, 343 NLRB 346 (2004) (NLRB jurisdiction not found where, inter alia, employer was administered by publicly appointed and removable officials, its budget was derived from tax revenue and subject to county approval, and public audit and reporting to county required); Cf. Research Foundation of the City Univ. of NY, 337 NLRB 965, 969-970 (2002) (NLRB jurisdiction where none of the employer's board members were appointed or subject to removal by public officials, but not responsible or accountable to any government entity concerning its budget). Here, CPS's oversight of CMSA's budget, CPS's considerable funding to CMSA, CMSA's reporting requirements, and CMSA's overall accountability to CPS conclusively establishes that CMSA is administered by officials who are "responsible to public officials or the general electorate."

The Employer-Petitioner argues in its post-hearing brief that in light of the Board's most recent application of the second prong of the Hawkins test, the "sole focus" of analysis rests on the composition of the employer's government body. However, I find that the Board, contrary to the Employer-Petitioner's contention, did consider the aforementioned factors in its entirety. The Board found that because these factors did not apply to the employer in Charter Schools Administration Services, the remaining, "...sole focus, therefore..." to evaluate, was the composition of the "Employer's board of directors and to whom the members of the Employer's board are accountable." The Board found that the individuals who administered Charter Schools Administration were not appointed by or subject to removal by public officials. In so holding, the Board found that there was no indication that the employer's board of directors or its corporate officers had any direct personal accountability to public officials or the general electorate. Charter School Administration was not subject to the Michigan Open Meetings Act or the Michigan Freedom of Information Act. Charter Schools Administration had no direct reporting requirements to the State, was not required to submit a financial audit to the State, was not required to submit its budget to the State for review, did not directly receive any public funds, and its employees did not enjoy government immunity.

Further, Charter Schools Administration Services can be distinguished from the case at hand given the differences in the entity at issue. The issue in Charter Schools Administration Services was whether an education management organization (EMO) was exempt from NLRB jurisdiction as opposed to the case at hand where the issue is whether the charter school itself, not an EMO, is a political subdivision of the State of Illinois.

This distinction is important because, unlike the instant case, where the employer, CMSA, holds the charter and is a public charter school, in *Charter Schools Administration Services*, the employer was a for-profit corporation doing business as an EMO, which operated a Michigan charter school under a contract with an entity holding the charter.

Civitas Schools, LLC, 13-RM-1764, a prior decision by this Region, can likewise be distinguished from the case at hand. As in Charter Schools Administration Services, the employer, Civitas Schools, LLC, was also an EMO that contracted with an entity who held the charter and it was that entity, not Civitas Schools, which received direct funding from political bodies and had a direct relationship with CPS. Civitas Schools was found to be an employer subject to the jurisdiction of Section 2(2) of the Act. This Region held that the employer's administration had no direct personal accountability to public officials or the general electorate. In support of this finding, this Region took into consideration several factors, including the fact that Civitas Schools did not have any direct reporting requirements to CPS, was not required to submit its budget to the State for review, did not directly receive any public funds, and its employees did not enjoy government immunity.

Unlike Charter Schools Administration Services and Civitas Schools where the employer in each case was an EMO, distinct from the entity holding the charter, CMSA is the charter school itself with direct reporting and compliance responsibilities to public officials and is therefore a political subdivision of the State exempt from NLRB jurisdiction. The instant case is analogous to the Region 31 and 32 cases in which the Regional Directors reasoned that because the Board of Directors were directly accountable to public officials with respect to compliance with their charters, provisions of law, and their finances (quarterly reports, independent audits, direct and substantial funding, and the sponsor's right to revoke for gross financial mismanagement), the charter schools were administered by individuals responsible to public officials.

CMSA is likewise accountable to CPS with respect to compliance with the charter, provisions of law, and its finances. CMSA's Board of Directors, although not appointed or subject to removal by public officials, are nonetheless accountable to CPS to such an extent that its governing body is responsible to public officials or to the general electorate. CMSA's Board of Directors must submit independent annual financial audits, a detailed budget, and quarterly statements. CMSA receives 80% of its operating budget from CPS. CMSA's compliance with the myriad of reporting requirements to CPS determines not only the amount of funding allocated to CMSA but also whether CMSA's charter will be renewed, put on probation, or revoked by CPS. These reporting requirements include daily accountability reports, academic progress oversight, and required teacher credentials. While CPS has yet to reject CMSA's budget submissions, it is significant that CPS has authority to do so if CMSA's budget is not in accordance with CPS's standards. Therefore, taking into consideration the totality of the factors, I find that CMSA is administered by individuals responsible to public officials given CPS's oversight of CMSA's budget, CPS's funding to CMSA, and CMSA's reporting accountability requirements. Accordingly, I find that CMSA is a political subdivision of

the State of Illinois and not an employer within the meaning of the Act. Therefore, it is not subject to the Board's jurisdiction and the instant petition is dismissed.

# V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **October 4, 2010**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at <a href="https://www.nlrb.gov">www.nlrb.gov</a>. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

Dated at Chicago, Illinois this 20<sup>th</sup> day of September 2010.

Arly W Eggertsen, /

Acting Regional Director

Regional Director

National Labor Relations Board

Region 13

209 South LaSalle Street, 9th Floor

Chicago, Illinois 60604

CATS — Jurisdiction - Statutory Exempted Employer

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